IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.669 OF 2004
IN
WRIT PETITION NO.981 OF 2004

Bijendra Singh ..Petitioner
Vs.
Amarjit Singh Mongia ..Respondent

Mr.K.R.Dhanuka with Mr. M.B. Jadhav for Petitioner to show cause

Mr.M.S.Mhambrey for Respondent no.1 in support

CORAM: F.I. REBELLO, J.
DATE: 9TH DECEMBER, 2004.

P.C.

1. The petitioner is admittedly residing in the premises belonging to the respondent no.1. Proceedings have been taken out for eviction of the petitioner from the premises by the respondent no.1 in which the respondent no.1 succeeded. Revision preferred has been dismissed. The petitioner filed the present writ petition where rule has been issued by order dated 24th February, 2004. The petitioner was also called upon to pay a sum of Rs.3,00,000/- as the amount was not disputed at any time. A subsequent order came to be passed on 28th April, 2004. The amount deposited had to be invested. However, the learned Judge in the order dated 28th April, 2004 granted liberty to respondent no.1 to apply for withdrawal if so advised.

2. Respondent no.1 has then taken out the present application and has prayed for various reliefs including a direction that the petitioner be called upon to deposit Rs.10,200/- per month on or before 10th day of every calendar month from 1st December, 2004 till the hearing and final disposal of the petition. The Motion was taken on 2nd December, 2004. Admittedly the licence fees was Rs.5,100/-.

3. This relief sought by respondent no.1 is opposed by the petitioner. The learned Counsel contends that the petitioner in fact has paid the entire consideration for the flat to respondent no.1 and relies on the receipt which is annexed to the petition. Apart from that he submitted that the amount is already invested and in these circumstances respondent no.1 should not be allowed to withdraw the amount. As the petitioner has paid the entire consideration of the flat the question of depositing at the rate of Rs.10,200/- per month would not arise. He further submits that order of the Courts below are without jurisdiction in as much as the proceedings ought to have been initiated under Section 41 of the Small Causes Court Act.

4. The issue as to whether the orders of the Court are without jurisdiction, has to be decided on

merits. Suffice it to say that there are two orders today in favour of the respondent no.1. By those orders, the petitioner is directed to be evicted from the premises and apart from that called upon to pay Rs.10,200/- which is double the rate according to law. The monthly licence fees was Rs.5,100/-. Even though the petition is admitted to my mind considering the orders in favour of the respondent no.1 and as the petitioner continues to reside in the premises subject to orders that is finally passed by the Court, it would be necessary that the petitioner be called upon to deposit the monthly licence fees of Rs.5100/- from the date of the application. In so far as the relief of withdrawal of the amount deposited, I see no difficulty in granting the said relief subject to the respondent no.1 furnishing Bank Guarantee to the satisfaction of the Prothonotary and Senior Master, High Court of any Nationalised Bank having its branch in Mumbai and keeping the Bank Guarantee alive pending the decision of the petition and for a period of twelve weeks there after.

. In the light of that the following order:-

(i). Motion is made absolute in terms of prayer clause (c) subject to respondent no.1 furnishing Bank Guarantee of a Nationalised

Bank having its branch in Mumbai to the satisfaction of the Prothonotary and Senior Master, High Court, Mumbai. The Bank guarantee be furnished within a period of eight weeks from today. On furnishing the Bank guarantee the amount be released in favour of respondent no.1. The Bank guarantee to be kept alive pending the hearing and final disposal of the Petition and for a period of twelve weeks thereafter.

(ii). The petitioner is called upon to deposit a sum of Rs.5100/- per month, first of such deposit will be made on or before 10th January, 2005 and there after every succeeding month on or before the said date till the hearing and final disposal of the petition and subsequent orders there upon made by this Court.

. It will be open to the respondent no.1 to withdraw these amounts so deposited every six months on again furnishing Bank Guarantee as directed in terms of direction (1) and keeping it alive as earlier directed.

(iii). The Motion stands disposed of

accordingly. No order as to costs.

(F.I.REBELLO,J.)